

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION II

CA 06-1399

May 9, 2007

ANTHONY ROGO

APPELLANT

APPEAL FROM THE JACKSON
COUNTY CIRCUIT COURT
[NO. DR-2006-150]

V.

HONORABLE KEVIN KING,
JUDGE

KRYSTAL JANELLE JOHNSON

APPELLEE

AFFIRMED

Appellant Anthony Rogo appeals from an order of protection entered against him and in favor of appellee Janelle Johnson. Appellant contends on appeal that there is insufficient evidence to support the trial court's finding that he committed domestic abuse. We affirm.

Under the Domestic Abuse Act of 1991, a trial court is authorized to enter an order of protection in cases of domestic abuse. *See* Ark. Code Ann. §§ 9-14-101 - 9-15-303 (Repl. 2002 and Supp. 2005). Domestic abuse is defined in part as physical harm, bodily injury, or assault between family or household members. Ark. Code Ann. § 9-15-103(2)(A) (Supp. 2005). The phrase "family or household members" includes former spouses. Ark. Code Ann. § 9-15-103(3).

The standard of review on appeal from a bench trial is whether the judge's findings are clearly erroneous or clearly against the preponderance of the evidence. *Newton v. Tidd*, 94 Ark. App. 368, ___ S.W.3d ___ (2006). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Simmons v. Dixon*, 96 Ark. App. 260, ___ S.W.3d ___ (2006).

Disputed facts and determinations of credibility of witnesses are within the province of the fact finder. *Pablo v. Crowder*, 95 Ark. App. 268, ___ S.W.3d ___ (2006).

The evidence in this case shows that appellant and appellee were once married and have two children. Appellee had custody of the children, and appellant exercised visitation every other weekend. On Friday, August 4, 2006, the visitation exchange went awry.

Appellee testified at the hearing that she and appellant had been having problems since his remarriage, explaining that she and appellant's present wife, Melissa, were not fond of one another. Aside from marrying appellant, Melissa had also dated two of appellee's ex-boyfriends. Appellee testified that, when appellant and Melissa arrived to pick up the children, she was talking to appellant about the problems she was having with Melissa, as appellant sat in the passenger seat with the car door open. She said that appellant grabbed her head and banged it against the inside of the car door. After this, appellee took hold of their son's arm in an effort to extricate him from the back seat of the two-door vehicle. Appellee said that Melissa then punched the accelerator and dragged her down the street. Appellee further testified that she sustained two black eyes and a concussion as a result of appellant's banging her head against the car door.

On cross-examination, appellee admitted that she had spent three days in jail after an altercation she had with her mother. She had also pled guilty to a charge of third-degree battery in an incident involving another woman. Appellee did not file the petition seeking a protective order until Wednesday, August 9, 2006.

Deputy Jim Neeley with the Jackson County Sheriff's Office testified that appellee came into the sheriff's office on Monday, August 7, 2006, to make a complaint against appellant. He saw that appellee had a condition commonly referred to as "raccoon eyes," which he said is caused when a person is struck on the front part of the head. He said that appellee had blood spots in the corners

of both eyes and that the areas underneath her eyes and her eyelids were turning purple. He also observed a mark on her head just above the hairline where appellee said that she had been struck by appellant with the car door. Deputy Neeley said he had no doubt that appellee suffered physical trauma the preceding Friday. Photographs were introduced into evidence showing the redness and bruising in and around appellee's eyes, as well as abrasions on her left hand, right leg, and right foot.

Appellant's recollection of the events on August 4 differed from that of appellee. Appellant testified that appellee called him en route and berated him for having Melissa with him to pick up the children. He said that he called the police and was advised to approach the house alone to get the children and to have Melissa stay off appellee's property by parking on the street. He said that he complied with this request but that appellee and the children were not at home when he arrived. As he waited, appellee drove up with the children, who got in his car. Appellant testified that when he got into the car appellee began punching him in the face and slapping him and pulling his hair. He said that the children were screaming and that appellee punched him again and dove into the car to attack Melissa. Appellant then closed the car door but was not able to get it completely shut. He said that appellee opened the door as they were driving away and continued to slap at him. At some point, she got hold of their son's arm. Appellant testified that appellee injured herself when she fell while running along side the car. He said that he did not lay a hand on her.

After the altercation, appellant, Melissa, and the children went to the police station. Appellant and appellee's son was taken by ambulance to the hospital where he was treated for a hyper-extended arm. Appellee was also taken to the hospital in an ambulance. Both appellant and appellee were issued citations for domestic battery. Appellee was also charged with endangering the welfare of a minor. The children were taken into custody that night by the department of human services and placed in foster care over the weekend. Appellant filed a motion for emergency custody

the following Monday. The children were returned to appellee that Monday, but the department of human services subsequently made a true finding of child maltreatment against appellee for injuring the child's arm. Appellee was ordered to attend counseling and parenting classes, she was forbidden to use corporal punishment on the children, and was required to undergo random drug testing.

Roberta Garland also testified at the hearing. She saw appellee on Saturday, August 4, 2006, at a yard sale. She said appellee did not have black eyes and that the only injury she saw was the abrasion on her leg.

Appellant contends on appeal that the evidence does not support a finding that he committed domestic abuse. He argues that the evidence shows that he did not harm appellee and that his version of events was bolstered by the true finding of child maltreatment against appellee. He contends that the only evidence supporting the trial court's ruling was the uncorroborated testimony of appellee, but he argues that her credibility was undermined by her history of attacking other people. We find no basis for disturbing the trial court's decision. As appellee suggests, this case boils down to a credibility determination made by the trial court. The resolution of any conflict in the testimony was for the trial court, and on appeal, we will not overturn such a finding based on a credibility determination. *Lee v. Daniel*, 350 Ark. 466, 91 S.W.3d 464 (2002).

Affirmed.

MARSHALL and VAUGHT, JJ., agree.